

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

LIBERTY MUTUAL FIRE)
INSURANCE COMPANY,)
)
Plaintiff,) CIVIL ACTION NO.: 1:07-CV-1516
v.)
)
APAC-SOUTHEAST, INC., f/k/a)
APAC-GEORGIA, INC.,)
)
Defendant.)
)

JOINT PRELIMINARY REPORT AND DISCOVERY PLAN

1. Description of Case

a) Describe briefly the nature of this action. Plaintiff Liberty Mutual Fire Insurance Company ("Liberty Mutual") seeks a declaratory judgment determining that Defendant APAC-Southeast, Inc.'s f/k/a APAC-Georgia, Inc. ("APAC") voluntary settlement of the underlying "Graves Lawsuit" nullified coverage for APAC under the Liberty Mutual policy of liability insurance issued to Costello Industries, Inc. ("Costello"). APAC denies that declaratory relief is an available remedy and has filed a Counterclaim against Liberty Mutual for, *inter alia*, breach of contract; fraud, estoppel and bad faith; breach of the covenant of good faith;

JURISDICTIONAL ATTACHMENT

Defendant denies that this case presents an actual controversy appropriate for declaratory relief, as Plaintiff has already declared that there is no insurance coverage available for Defendant, and there are no remaining obligations to perform under the insurance contract. Rather, this dispute is properly cast as an action at law. Defendant asserts that there is no remaining uncertainty warranting a suit for declaratory relief. *National R.R. Passenger Corp. v. Consolidated Rail Corp.*, 670 F.Supp. 424, 431 (D.D.C.1987).

FILED IN CHAMBERS
U.S.D.C. Atlanta

AUG 24 2007

By: *James N. Hatten*, Clerk
James N. Hatten, Deputy Clerk

Approved *27* day of August 2007
Julie E. Carnahan
JULIE E. CARNAHAN
UNITED STATES DISTRICT JUDGE